

RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE REQUESTED
EXAMINING GROUP 3764



Customer No. **22852** PATENT
PATENT TRADEMARK OFFICE

Attorney Docket No. 07883.0046

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Peter BOEKSTEGERS et al.

Application No.: 09/917,655

Filed: July 31, 2001

For: MYOCARDIAL STENTS AND
RELATED METHODS OF
PROVIDING DIRECT BLOOD
FLOW FROM A HEART
CHAMBER TO A CORONARY
VESSEL

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) Group Art Unit: 3764

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) Examiner: Q. Thanh
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TECHNOLOGY CENTER R3700

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TERMINAL DISCLAIMER

Sir:

Petitioner ("Assignee") Percardia, Inc., duly organized under the laws of the State of Delaware and having its principal place of business at 10 Al Paul Lane, Suite 202, Merrimack, New Hampshire 03054, through its attorneys, represents that it is the only assignee of the entire right, title, and interest in and to the above-identified application, U.S. Patent Application No. 09/917,655, filed July 31, 2001, for MYOCARDIAL STENTS AND RELATED METHODS OF PROVIDING DIRECT BLOOD FLOW FROM A HEART

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CHAMBER TO A CORONARY VESSEL, as indicated by assignment duly recorded in the United States Patent and Trademark Office at Reel 012033, Frame 0946, and is and at all times was the only assignee of U.S. Patent No. 6,290,728 B1, issued September 18, 2001, for DESIGNS FOR LEFT VENTRICULAR CONDUIT, as indicated by the assignment duly recorded in the United States Patent and Trademark Office at Reel 10580, Frame 0715.

To obviate a double patenting rejection, Assignee hereby disclaims, under the provisions of 37 C.F.R. § 1.321, the terminal part of any patent granted on the above-identified U.S. Patent Application No. 09/917,655, which would extend beyond the expiration date of U.S. Patent No. 6,290,728 B1 and hereby agrees that any patent so granted on the above-identified U.S. Patent Application No. 09/917,655 shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 6,290,728 B1. This agreement runs with any patent granted on the above-identified U.S. Patent Application No. 09/917,655 and is binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the above-identified U.S. Patent Application No. 09/917,655 that would extend beyond the expiration date of the full statutory term, as defined in 35 U.S.C. §§ 154 to 156 and 173, of U.S. Patent No. 6,290,728 B1, as shortened by any terminal disclaimer, in the event that U.S. Patent No. 6,290,728 B1: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination

Application No. 09/917,655

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certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term, as presently shortened by any terminal disclaimer.

In accordance with the fee schedule set forth in 37 C.F.R. § 1.20(d), the required fee of \$55.00 is being filed with this Terminal Disclaimer.

If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this reply, please charge the fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 24, 2003

By: 

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